

Mo Jacob,  
Plaintiff  
v.  
Dennis E. Rusk, et al.,  
Defendants

**Order Denying Motion for Sanctions**  
[ECF Nos. 65, 67]

## Background

<sup>4</sup> ECF No. 1-1.

1 rescinded when the Nevada State Board of Architecture discovered that Rusk had misrepresented  
2 many of the bases for their settlement.

3       Jacob brought this action in California and alleged claims arising out of the rescinded  
4 settlement agreement as well as the original contract to build VERGE (which predated the  
5 settlement rescission by five years). The Central District of California requires litigants to meet  
6 and confer before filing a summary-judgment motion, so Rusk met with Jacob to discuss his  
7 bases for requesting summary judgment. At that meeting, Rusk raised his statute-of-limitations  
8 argument (among others), Jacob responded that a California civil-procedure statute tolled the  
9 limitations period while Rusk was in Nevada, and Rusk replied that Nevada law—not California  
10 law—governs this case.<sup>5</sup> The parties couldn't resolve their disputes at that conference, so Rusk  
11 moved for summary judgment.

12       In his motion, Rusk once again raised the statute-of-limitations argument.<sup>6</sup> And without  
13 discussing which state's law governs, Jacob echoed his pre-motion-conference argument that  
14 California law tolled the limitations period.<sup>7</sup> The California court denied the motion without  
15 prejudice because Rusk failed to comply with the local rules, and before Rusk could renew his  
16 argument with a rule-compliant motion, the California court transferred Jacob's case to this  
17 district. Rusk then moved for judgment on the pleadings (a motion that was functionally  
18 equivalent to his summary-judgment motion). I granted that motion, after concluding that,  
19 regardless of which state's law I applied, Jacob's claims were too late. I also found that the  
20 California tolling statute was unconstitutional as applied because it violated the commerce  
21 clause. Rusk now moves for sanctions against Jacob's attorney for maintaining this lawsuit, in  
22 spite of earlier indications that the claims were too late.

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25 <sup>5</sup> ECF No. 65 at 5.

26 <sup>6</sup> There was some discussion about which state's law governed this case, but that discussion was  
27 eclipsed by Rusk's contention that it didn't matter because the statute had run under either state's  
28 laws. ECF No. 29 at 14–21.

<sup>7</sup> ECF No. 33 at 25–28.

1 **Discussion**

2 **A. Standard for sanctions under 28 U.S.C. § 1927<sup>8</sup>**

3 The United States Code allows a court to sanction an attorney for “unreasonably and  
4 vexatiously” “multipl[ying] the proceedings in any case.”<sup>9</sup> This sanction applies “only to  
5 unnecessary filings and tactics once a lawsuit has begun”; it does not apply to the filing of a  
6 complaint.<sup>10</sup> To be sanctioned under § 1927, the attorney must have acted in bad faith.<sup>11</sup> “Bad  
7 faith is present when an attorney knowingly or recklessly raises a frivolous argument, or argues a  
8 meritorious claim for the purpose of harassing an opponent.”<sup>12</sup> “For sanctions to apply, if a  
9 filing is submitted recklessly, it must be frivolous, while if it is not frivolous, it must be intended  
10 to harass. Thus, while it is true that reckless filings may be sanctioned, and nonfrivolous filings  
11 may also be sanctioned, reckless nonfrivolous filings, without more, may not be sanctioned.”<sup>13</sup>

12 **B. Sanctions under § 1927 are not warranted.**

13 Rusk argues that it was unreasonable and vexatious for Jacob to maintain this lawsuit  
14 after Rusk raised the statute-of-limitations argument at the pre-summary-judgment-motion  
15 conference.<sup>14</sup> To get around this argument, Jacob had to rely on a California tolling statute that  
16 has been found to be unconstitutional where interstate commerce is involved.<sup>15</sup> So, this raises  
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19 <sup>8</sup> I do not address Jacob’s arguments regarding Rule 11 of the Federal Rules of Civil Procedure  
20 because Rusk seeks sanctions exclusively under 28 U.S.C. § 1927. ECF No. 65 at 9 n.2.  
21 Although Rusk reminds me of my inherent authority to impose sanctions under Rule 11 sua  
22 sponte, ECF No. 65 at 9 n.2, I decline to do so.

23 <sup>9</sup> 28 U.S.C. § 1927.

24 <sup>10</sup> *In re Keegan Management Co., Securities Litigation*, 78 F.3d 431, 435 (9th Cir. 1996).

25 <sup>11</sup> *Id.* at 436; *see also Estate of Blas v. Winkler*, 792 F.2d 858, 860 (9th Cir. 1986).

26 <sup>12</sup> *In re Keegan*, 78 F.3d at 436 (quoting *Estate of Blas*, 792 F.2d at 858) (internal quotations  
27 omitted).

28 <sup>13</sup> *Id.*

<sup>14</sup> ECF No. 65 at 8.

<sup>15</sup> ECF No. 33 at 26–27.

two questions. First, did Jacob lack a good-faith belief that California applied? And second, did Jacob believe in bad faith that interstate commerce was not involved?

**1. Rusk has not shown that Jacob had a bad-faith belief that California law applied.**

Jacob never directly addresses the governing-law issue, but he relies entirely on a California tolling statute to get his claims within the relevant limitations periods.<sup>16</sup> So, it's fair to say that he believes California's law governs the underlying dispute. Rusk, on the other hand, contends that Nevada law applies.<sup>17</sup> But his contentions (in this motion and throughout this case) are conclusory and lack any analysis or supporting citations.<sup>18</sup> So, Rusk has not met his burden to show that Jacob lacked a good-faith belief that California law applied.

**2. Jacob had a good-faith belief that Cal. Civ. Proc. Code § 351 applied.**

Jacob relied on California Civil Code § 351 to toll the statute of limitations and bring his claims within the applicable limitations periods.<sup>19</sup> That statute has been found unconstitutional when it interferes with interstate commerce,<sup>20</sup> and I found that to be the case here.<sup>21</sup> Although Rusk alluded to that statute's unconstitutionality earlier in this case,<sup>22</sup> my finding does not prove that Jacob's reliance on it was unreasonable or vexatious. Jacob argued in good faith that his

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<sup>16</sup> See ECF Nos. 33, 50.

<sup>17</sup> See ECF No. 65 at 5.

<sup>18</sup> See, e.g., ECF No. 65 at 5 (“[Rusk’s] retort was that under conflict of laws principles, it was the Nevada statutes [that] applied.”) and n.1 (“With reference to the Opposition to Motion for Summary Judgment . . . the position of the Plaintiff offered through Yaspan in an attempt to argue that the matter did not involve interstate commerce determinatively demonstrated that the proper statutes of limitations could only be those of Nevada.”); ECF No. 65 at 8 (“Functionally ignored, at the onset and in the reply, was the fact that under immutable conflict of laws principles, the Nevada statutes, not the California statutes, of limitations applied to the transactions.”); ECF No. 29 at 15 (citing to no authority and establishing no conflict-of-laws standards and concluding: “The statutes of limitations applying to the Plaintiff’s claims are, therefore, the applicable statutes in Nevada.”); ECF No. 50 at 13 (same).

<sup>19</sup> ECF No. 56 at 8–9.

<sup>20</sup> See *Abramson v. Brownstein*, 897 F.2d 389 (9th Cir. 1989).

<sup>21</sup> ECF No. 63 at 3.

<sup>22</sup> ECF No. 29 at 20.


1 involvement with VERGE did not impact interstate commerce,<sup>23</sup> so the tolling statute was still  
2 constitutional as applied to him.<sup>24</sup>

3 Based on the record, I cannot conclude that Jacob was unreasonable or vexatious in  
4 maintaining this lawsuit by defending his claims against Rusk's repeated attempts to bring an  
5 early end to this action. Rusk has not shown that Jacob's reliance on California law was reckless  
6 and frivolous, and Jacob has shown that he had a good-faith belief that the California tolling  
7 statute applied to him. So, I deny Rusk's motion for sanctions.<sup>25</sup>

8 **Conclusion**

9 Accordingly, IT IS HEREBY ORDERED that Rusk's motion for sanctions [ECF No. 65]  
10 is **DENIED**. And because I read and considered Rusk's reply brief in deciding this motion, his  
11 motion for an enlargement of time [ECF No. 67] is **GRANTED**.

12 Dated: May 1, 2018

13   
14 U.S. District Judge Jennifer A. Dorsey

23 <sup>23</sup> Although Jacob invested in and consulted on the Verge project, he argues that he "is not the  
24 developer of the Verge property, he did not own Verge, he was not the builder of the Verge  
property and he did not own the Verge real property." ECF No. 66 at 11.

25 <sup>24</sup> ECF Nos. 33 at 26–27; 66 at 10–11 (citing *Pratali v. Gates*, 4 Cal. App. 4th 632, 641 (1992)  
26 (holding that § 351 is not unconstitutional where there is no interference with interstate  
commerce)).

27 <sup>25</sup> I disregard Rusk's supplemental brief in support of his motion for sanctions because he filed it  
28 without leave of court in violation of Local Rule 7-2(g).